

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

RUSSELL L. BROWN, JR.,  
Plaintiff

V.

NO. 3:94CV75-B-D

READWOOD, INC. d/b/a "Filer &  
Stowell Sales Company," THE GREYLOCK  
COMPANY, DOME CORPORATION, STOWELL  
INDUSTRIES, INC., BETA MANUFACTURING  
COMPANY, INC., PAMCO, INC., and  
CHARLES S. READ,  
Defendants

**MEMORANDUM OPINION**

This matter comes before the court upon The Greylock Company's motion to dismiss. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

**FACTS**

On June 10, 1991, the plaintiff was employed by Hankins Lumber Company in Grenada, Mississippi. He was injured on that date as a result of an industrial accident with a piece of sawmill machinery, in which his leg was caught in an unguarded chain. The machinery which caused the plaintiff's injury was allegedly manufactured by The Filer and Stowell Company, Inc. (hereinafter "Filer and Stowell")<sup>1</sup>, or one of its predecessors. The plaintiff sued Filer and Stowell in 1993 and obtained a default judgment in the amount of \$285,000.00.

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<sup>1</sup> The court realizes that the name "Filer and Stowell" may be used in some capacity by more than one company. However, for purposes of this opinion, "Filer and Stowell" refers to the defendant in the 1993 action, namely The Filer and Stowell Company, Inc.

Filer and Stowell is or was a Wisconsin corporation owned by the Read family. All of the corporate defendants in this action are likewise owned by the Reads. The plaintiff has filed this action against other Read family businesses in an attempt to either establish liability against them for the plaintiff's injuries, or in the alternative, to collect the default judgment obtained against Filer and Stowell.

The Greylock Company (hereinafter "Greylock"), one of the companies sued by the plaintiff, is a Wisconsin corporation primarily engaged in the real estate business. Its principal place of business is located in Milwaukee, Wisconsin. In 1984, Greylock purchased 100% of the outstanding shares of stock of Filer and Stowell for book value.

Greylock has filed a motion to dismiss for lack of personal jurisdiction. The plaintiff, in asserting jurisdiction over Greylock, does not contend that Greylock directly meets the requirements of long-arm jurisdiction under Mississippi law. Rather, the plaintiff asserts that Greylock exercised such dominion and control over Filer and Stowell as to become its alter ego. The plaintiff asks that the court pierce the corporate veil and attribute Filer and Stowell's contacts with Mississippi to Greylock for purposes of obtaining personal jurisdiction.

#### **LAW**

The plaintiff bears the burden of establishing jurisdiction over a non-resident defendant. Thompson v. Chrysler Motors Corp., 755 F.2d 1162, 1165 (5th Cir. 1985); Brown v. Flowers Indus., Inc.,

688 F.2d 328, 332 (5th Cir. 1982), cert. denied 460 U.S. 1023, 75 L. Ed. 2d 496 (1983). When the court decides the defendant's motion to dismiss without an evidentiary hearing, the plaintiff is only required to present a prima facie case of personal jurisdiction. Thompson, 755 F.2d at 1165; Brown, 688 F.2d at 332. The allegations of the plaintiff's complaint, except as controverted by the defendant's affidavits, must be taken as true. Thompson, 755 F.2d at 1165; Brown, 688 F.2d at 332. In determining the jurisdictional issue, the court may consider affidavits, interrogatories, depositions, oral testimony, or any combination of the recognized methods of discovery. Thompson, 755 F.2d at 1165.

"A basic premise of corporate law, both in Mississippi and throughout the nation, is that a corporation possesses a separate identity from its shareholders, whether such shareholders are individuals or corporations." North Am. Plastics, Inc. v. Inland Shoe Mfg. Co., 592 F. Supp. 875, 877 (N.D. Miss. 1984). The corporation should retain its distinct identity, even though all or a majority of its stock is held by a single individual or corporation. Johnson & Higgins v. Commissioner of Ins., 321 So. 2d 281, 284-285 (Miss. 1975). Likewise, the mere fact that a corporation is a "family" or "closed" corporation should not operate to dissolve the corporate identity. Id. The Mississippi Supreme Court has long held a commitment to the legal integrity of the corporate entity, and the associated limited liability of its shareholders. Gray v. Edgewater Landing, Inc., 541 So. 2d 1044, 1047 (Miss. 1989).

Mississippi follows the general rule of law that the distinct corporate identity will be maintained unless to do so would subvert the ends of justice. Johnson & Higgins, 321 So. 2d at 284. Piercing the corporate veil is reserved for factual circumstances which are clearly extraordinary. Gray, 541 So. 2d at 1046. The doctrine of piercing the corporate veil should be applied with great caution, and not precipitately. T.C.L., Inc. v. Lacoste, 431 So. 2d 918, 922 (Miss. 1983), overruled on other grounds by C & C Trucking Co. v. Smith, 612 So. 2d 1092 (Miss. 1992). It should not be applied where those in control have intentionally adopted the corporate form to secure its advantages, unless the corporation exists to perpetrate a fraud, or is merely an instrumentality or agent of the majority shareholder(s). T.C.L., Inc., 431 So. 2d at 922; Johnson & Higgins, 321 So. 2d at 285.

In North American Plastics, Inc., supra, this court previously confronted the quandary posed by the required liberal construction of the plaintiff's pleadings in a motion to dismiss and the strict requirement of extraordinary circumstances necessary to pierce the corporate veil. The court notes, as it did in North American Plastics, Inc., that jurisdiction is unquestionably proper in the home state of the defendant. As stated in this court's earlier opinion:

If this court were to lightly pierce the corporate veil so as to acquire long-arm jurisdiction, a prolonged factual inquiry may merely resolve that jurisdiction is improper, thus necessitating another factual inquiry as to the merits in the defendant's home court. Thus, this court holds that, absent a sufficient allegation of particularized facts, judicial economy requires that the corporate veil should not be preliminarily pierced for

long-arm jurisdiction on the mere unsubstantiated allegations in the pleadings.

North Am. Plastics, Inc., 592 F. Supp. at 879.

Whether or not to pierce the corporate veil is a factual determination that must be made on a case by case basis. While there is no precise formula, the following ten factors adopted from Fish v. East, 114 F.2d 177, 191 (10th Cir. 1940) should be considered in making such a determination:

(1) The parent corporation owns all or a majority of the capital stock of the subsidiary. (2) The parent and subsidiary corporations have common directors or officers. (3) The parent corporation finances the subsidiary. (4) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation. (5) The subsidiary has grossly inadequate capital. (6) The parent corporation pays the salaries or expenses or losses of the subsidiary. (7) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation. (8) In the papers of the parent corporation and in the statements of its officers, "the subsidiary" is referred to as such or as a department or division. (9) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take direction from the parent corporation. (10) The formal legal requirements of the subsidiary as a separate and independent corporation are not observed.

North Am. Plastics, Inc., 592 F. Supp. at 879; Johnson v. Warnaco, Inc., 426 F. Supp. 44, 49 (S.D. Miss. 1976).

The plaintiff has presented evidence that Greylock owns all of the Filer and Stowell stock, and that both corporations share common officers and directors. However, commonality of ownership or of officers and directors, absent more, is insufficient to pierce the corporate veil. North Am. Plastics, Inc., 592 F. Supp. at 879; Murdock Acceptance Corp. v. Adcox, 138 So. 2d 890, 895

(Miss. 1962). The plaintiff has presented very little evidence to support any of the other factors. As to the parent corporation financing the subsidiary, Greylock admits to having made four loans to Filer and Stowell during the period of 1985-1986. Greylock never received any payment of principal or interest on the loans, despite Filer and Stowell selling its assets to pay off its debts. The fact that Greylock loaned money to Filer and Stowell without receiving any return payments could be considered evidence of some degree of financing by Greylock. No other factors are supported by the evidence. The plaintiff asserts that corporate formalities were not observed, but the evidence reflects otherwise. While Filer and Stowell may not have met every formality, there is no evidence which would warrant a finding that the formal legal requirements of a separate and independent corporation were not observed.

In sum, the plaintiff, who bears the burden of proof, has not presented a prima facie case of personal jurisdiction. The evidence offered is insufficient to support the plaintiff's allegation that Greylock exercised such control over Filer and Stowell that the separate nature of the corporation ceased to exist. Accordingly, the court finds that there is no justification for piercing the corporate veil, and that in personam jurisdiction over Greylock does not exist.

In responding to Greylock's motion to dismiss, the plaintiff further asserts that the motion may be premature, in that the plaintiff has not been allowed to conduct discovery on the issues

of alter ego and piercing the corporate veil. However, the plaintiff is mistaken in his assertion. The concepts of alter ego and piercing the corporate veil pertain to personal jurisdiction, and are the only manner in which the plaintiff has attempted to assert jurisdiction over Greylock. The plaintiff has been given adequate time to conduct discovery on the issue of personal jurisdiction. Therefore, the court finds that the plaintiff's motion for a continuance in which to conduct discovery on the issues of alter ego and piercing the corporate veil is without merit.

#### **CONCLUSION**

For the aforementioned reasons, the court finds that in personam jurisdiction over The Greylock Company does not exist, and therefore The Greylock Company's motion to dismiss should be granted. Furthermore, the court finds that the plaintiff's motion for a continuance in which to conduct further discovery on the issues of alter ego and piercing the corporate veil is without merit and should be denied.

An order will issue accordingly.

THIS, the \_\_\_\_\_ day of January, 1996.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE